IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1111 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JASHVANTBHAI ALIAS HARISHBHAI KHUSHALDAS RANA

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

1. Special Civil Application No. 1111 of 2004

MR KK TRIVEDI for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India

for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 01/12/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that four F.I.Rs. were registered against the petitioner before Southern Division Police Station between 23/09/03 and 27/09/03 for offences punishable u/s.66, 65 & 81 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities.

3. On the strength of the aforesaid registered offences and unregistered cases, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities, which amounted to a threat to public order. Accordingly, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that the representation of the petitioner was not promptly disposed of by the State Government, and therefore, the order of detention is illegal and hence it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, the learned advocate for the petitioner has argued at length that there was a delay in considering the representation of the petitioner. For this purpose, he has stated that the representation of the petitioner dated 12/12/03 which was sent on 13/12/03 was received by the office of the detaining authority on 16/12/03. Since the State Government had already approved the order of detention on 08/12/03, the detaining authority had forwarded the same to the State Government on 17/12/03. The said representation was rejected by the State Government on 18/12/03 and communication was sent on the same date which was received by the petitioner on 23/12/03. Considering the aforesaid factual dates, it would not be

possible for this Court to hold that there was no delay in dealing with the representation of the petitioner.

7. So far the statements of witnesses are concerned, the learned advocate for the petitioner has relied upon a decision of this Court in the case of Aiyubkhan Gulamdastgir Pathan V/s. Police Commissioner, Vadodara & Ors. reported in 1999 (3) GLR 2739. It was observed therein that the statements of the witnesses cannot be said to be material on which subjective satisfaction about the activity being prejudicial for maintenance of public order could safely be reached. In the present case also, considering the submissions made by the witnesses, it would be difficult to accept that the activities of the petitioner were likely to cause a threat to public order, though it may amount to a threat to a law and order situation. In that view of the matter, the order of detention cannot be sustained in the eye of law and it is required to be quashed and set aside.

9. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 01/12/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Jashvantbhai @ Harishbhai Khushaldas Rana, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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